Remarks

In the subject action, claims 1-3, 5-14, 16-20, 29-31 and 33 were rejected by the Examiner. No claim has been amended or cancelled. Accordingly, claims 1-3, 5-14, 16-20, 29-31 and 33 remain pending in the application. Reconsideration of the application is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 1-3, 5-8, 10-11, 16-19, 29-30 and 33 were rejected under 35 USC 103(a) as being unpatentable over US 6,035,211 to Rabe et al. (hereinafter "Rabe") in view of US 6,298,247 B1 to Alperovich et al. (hereinafter "Alperovich"). Claims 9, 12-14, 20 and 31 were rejected as being unpatentable over Rabe in view of Alperovich and further in view of U.S. Pat. No. 6,351,653 B1 to Alberth, Jr. et al. (hereinafter "Alberth"). Applicant respectfully requests reconsideration of these rejections for at least the following reasons.

1. Claims 1-3, 5-8, 10-11, 16-19, 29-30 and 33

Claim 1 recites in part "first providing, by the mobile client device, a first audio signal at a first audio volume level to a user; *determining* by the mobile client device, the *first audio volume level at which the mobile client device is being utilized by the user* for the first audio signal; and second providing, by the mobile client device, to the user a second audio signal at a second audio volume level, *the second audio volume level being non-intrusively lower than the first audio volume level initially*...."

When viewed as a whole, as required by law, the method requires the determination of the first audio volume level utilized by a user and the initial provision of the second audio signal at a non-intrusive volume level lower than the first audio signal, then an incremental increase of the second audio signal to a discernable volume level higher than the first volume level. This novel method allows the user to be alerted to the second signal while enjoying the first audio signal and without being startled or harmed by the second signal.

Rabe does not teach "determining by the mobile client device, the first audio volume level at which the mobile client device is being utilized by the user for the first audio signal", nor does Rabe teach "the second audio volume level being non-intrusively lower than the first audio volume level initially...." At best, Rabe teaches a hinged member (flip) with a tuned cavity for amplifying the speaker output of a mobile telephone while the flip is in the closed position ('inactive') or using an amplitude limiter enabled by a switch to limit ring volume to a maximum level while the telephone is in 'active' mode.

Rabe never teaches or suggests that the mobile device determines a first audio *volume level* at which the mobile device is *being used by the user* – in Rabe's recitations, only the 'active' or 'inactive' status of the telephone is determined. The status is based on the position of a hinged (flip) member or a switch, with amplification of the speaker by the flip in the inactive conformation (Col. 3, lines 13-20).

Rabe also does not teach or suggest the second audio volume level being non-intrusively lower than the first audio volume level initially. Rabe merely recites using a volume limiter to limit the *maximum amplitude* of the second signal, or flipping the tuned cavity away to prevent amplification; there is no suggestion that volume of the second signal is lower, higher, or equal to the first signal. The volume of the second signal is not adjusted in reference to the volume level of the first signal, but rather in reference to 'active' or 'inactive' status. Therefore, Rabe cannot teach this element.

Next, Alperovich is cited for teaching "while providing the first and second audio signals, incrementally increasing, by the mobile client device, the second audio volume level from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level." Even if it is assumed for the moment that the Examiner's reading of Alperovich is correct, Alperovich does remedy the above discussed deficiencies of Rabe. Thus, for at least this reason, claim 1 is allowable over Rabe, even when combined with Alperovich.

Nonetheless, Applicants note for the record that contrary to the Examiner's

reading of Alperovich, it does not teach the "... incremental increasing ..." recitation of claim 1. Alperovich is concerned with increasing amplification of a primary audio signal the mobile station wants to provide to a user, and decreasing amplification of a secondary audio signal the mobile station does not want to provide to the user. This is a natural solution to a situation where one audio signal is primary and desired, and the other is secondary and undesired. Applicants submit such a natural solution to a simple situation where one signal is primary and desired, and the other is secondary and undesired, does not offer any teaching on how to provide/introduce a second signal to a user, when the device is also providing a first signal; in other words, how to handle a situation when both signals are to be provided. In particular, Applicants submit the natural solution of increasing the volume of a primary and desired audio signal and decreasing the volume of a secondary and undesired audio signal, does not suggest to a person of ordinary skill in the art "initially introduce the second to be provided signal non-intrusively to the first to be provided signal, and gradually increase the second to be provided signal over the first to be provided signal."

Accordingly, for at least this additional reason, claim 1 is further non-obvious and allowable over Rabe in view of Alperovich.

Claims 2, 3, and 5-8 depend from claim 1, incorporating its recitations, and are thus allowable over Rabe in view of Alperovich for at least the same reasons.

Independent claims 10 and 29 include recitations similar in substance to those discussed above for claim 1, and are thus allowable over the combination of Rabe and Alperovich for at least the same reasons. Claim 10 is further allowable over Rabe and Alperovich because it recites a wireless mobile phone configured to be able to *terminate* the second audio signal, preventing the second audio signal from intruding on the first audio signal responsive to a user action. Neither Alperovich nor Rabe suggest any method for terminating the secondary audio signal.

Claims 11 and 16-19 and claims 30 and 33 depend from claims 10 and 29,

respectively, incorporating their recitations, and are thus allowable for at least the same reasons.

2. Claims 9, 12-14, 20 and 31

Claims 9, 12-14, 20 and 31 were rejected under 35 USC 103(a) as being unpatentable over Rabe in view of Alperovich and further in view of U.S. Pat. No. 6,351,653 B1 to Alberth, Jr. (hereinafter "Alberth"). However, Alberth does not remedy the deficiencies of Rabe and Alperovich with regard to claims 1, 10, and 29, from which claim 9, claims 12-14 and 20, and claim 31 depend, respectively. Thus, Applicants respectfully submit that claims 9, 12-14, 20 and 31 are allowable over Rabe in view of Alperovich and further in view of Alberth.

Conclusion

In view of the foregoing, reconsideration and allowance of claims 1-3, 5-14, 16-20, 29-31 and 33 is solicited. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1513. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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